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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/408,634	09/30/1999	MARK WISNIEWSKI	AVERP2514USA	4276

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 12/07/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/408,634	Applicant(s) WISNIEWSKI ET AL.	
	Examiner Robin A. Hylton	Art Unit 3727	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 20-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 13 September 2001 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Continued Prosecution Application*

1. The request filed on September 13, 2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/408,634 is acceptable and a CPA has been established. An action on the CPA follows.

### *Drawings*

2. The corrected or substitute drawings were received on September 13, 2001. These drawings are approved by the examiner.

### *Claim Rejections - 35 USC § 112*

3. Claims 1-17 and 20-22 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a closure having two laminated layers peelably attached to each other and each having an adhesive layer and a protective liner there over, does not reasonably provide enablement for a closure having two peelably attached layers, each having a bonded area and a non-bonded area. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. How does a multi-layer laminate having a bonded layer and an non-bonded layer secure a container?

4. Claims 1-17,20-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The structure of the claims is not clearly set forth in the claims. It is unclear where the bonded and non-bonded edges are in relation to the upper and lower edges, or how at least a portion of the non-bonded edges are not secured to an article.

It is unclear how the closure is used to "secure" and article.

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***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground, provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,3-8,10-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim of U.S. Patent No. 4,925,714. Although the conflicting claims are not identical, they are not patentably distinct from each other because each discloses an article having a first layer 11 and a second layer 12 of different polymeric films peelably attached together, a bonded edge 23 and 25, respectively, extending along the length of each layer comprising adhesive 20 and 22, respectively, a non-bonded edge extending along the width of each layer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the laminated structure of the patent to secure an article such that the non-bonded edge is not attached to the article.

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***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Freedman (US 4,925,714).

The structure is considered to be a closure having a first layer 11 and a second layer 12 of different polymeric films peelably attached together, a bonded edge 23 and 25, respectively, extending along the length of each layer comprising adhesive 20 and 22, respectively, a non-bonded edge extending along the width of each layer.

***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freedman.

Freedman discloses a range for the peel strength at the separation interface of less than 50 Newtons/meter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the peel strength in the range of 30 to 40 grams per 1-inch or 2-inch width at 90° peel, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Freedman is silent regarding specific polymeric film material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any of the known polymeric materials for the film layers, since it has been held to be within the general skill

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of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

10. Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freedman.

Freedman disclose a range for the peel strength at the separation interface of less than 50 Newtons/meter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the peel strength in the range of 30 to 40 grams per l-inch or 2-inch width at 90° peel, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Freedman is silent regarding specific polymeric film material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any of the known polymeric materials for the film layers, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

11. Claims 1,3-8,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freedman.

Freedman is silent regarding specific polymeric film material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use any of the known polymeric materials for the film layers, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Freedman discloses a range for the peel strength at the separation interface of less than 50 Newtons/meter. It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to make the peel strength in the range of 30 to 40 grams per 1-inch or 2-inch width at 90° peel, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

***Allowable Subject Matter***

12. Claims 2,9,14 may be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, first and second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

13. In view of the outstanding rejections under 35 USC 112, first and second paragraphs above, the patentability of claims 15-17 and 20-22 have not been determined at this time.

***Response to Arguments***

14. Applicant's arguments with respect to claims 1-17,20-22 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Laminated closures and other articles are cited of interest.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely

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asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

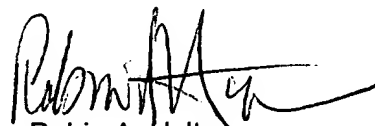
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:30 a.m. to 5:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
November 30, 2001



Robin A. Hylton  
Patent Examiner  
GAU 3727